IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

AS.No. 386 of 1998()

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OS.54/1993 of SUB COURT, HOSDRUG

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APPELLANT: PLAINTIFF

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E.ABOOBACKER, S/O.MOIDEEN
RESIDING AT NEDUGANDAM, NILESHWAR VILLAGE,
P.O.NILESHWAR, HOSDURG, KASARGOD DISTRICT.

BY ADV. SRI.G.SREEKUMAR

RESPONDENTS: DEFENDANTS

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1. SHEIK ESMATH ENOON, S/O.SHEIK ISMAIL
SAHEB RESIDING AT NILESHWAR.
P.O. NILESHWAR, HOSDURG, KASARGOD DISTRICT.

2. N.SOGARA BANU, D/O. DO. DO.

3. SHEIK MOHAMMAD YOUNAS, S/O. DO. DO.

4. SHEIK LIYAQUATHI ALI, S/O. DO. DO.

5. SHEIK IFTHIQUARUDHEEN, S/O. DO. DO.

6. N.JAMEELA BANU, D/O. DO. DO.

BY ADV. SRI.A.P.CHANDRASEKHARAN
SMT.PRABHA R.MENON

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.PADMANABHAN NAIR, J.**

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A.S.No. 386 of 1998

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Dated this the 17th July, 2007.

**J U D G M E N T**

The plaintiff in O.S.No.54/1993, on the file of the Subordinate Judge's Court, Hosdrug, is the appellant. The appeal is filed against that part of decree by which the appellant-plaintiff was directed to pay an amount of Rs.25,000/= to the first defendant in the suit. The suit was filed for partition. The plaint schedule properties originally belonged in jenm to Ammajan @ Hussainabi. She had six children. She died on 31.8.1990, leaving behind her children. Respondents 5 and 6 together had 3/10 share over the properties. The appellant purchased their rights under document No.412/91. Alleging that appellant is in joint possession along with other respondents, he filed a suit for partition. The first defendant alone contested the matter. Other defendants remained ex parte. He contented that he was unaware of the execution of the sale deed by defendants 5 and 6 in favour of the appellant. He further contented that the document was falsely got executed with the mala fide intention to defeat his rights. He also contented that one S.P.Aboobacker Haji was the tenant in one of the shop rooms, and in

order to evict him, R.C.P.No.15/80 was filed, and to conduct that case, he had spend an amount of Rs.83,330/=, and other defendants are liable to pay the equal share of the litigation expenses. In case, the court finds that the appellant is entitled to get a share in the property, he is also liable to pay an amount of Rs.25,000/=, being the proportioned amount due in respect of 3/10 share. The trial court, after considering the pleading and evidence, found that appellant-plaintiff is entitled to get 3/10 share. It also found that first defendant had spent an amount of Rs.83,000/= for conducting the litigation, and, as such, the appellant is liable to bear 3/10 share of that amount. The trial court, therefore, directed the appellant-plaintiff to pay an amount of Rs.25,000/= to the first defendant. Challenging that part of the decree alone, this appeal is filed.

2. The trial court raised an issue as No.5, as to whether the plaintiff is liable to reimburse Rs.25,000/= as contented in the counter claim. The evidence on record shows that there was an eviction proceedings as R.C.P.No.15/1980. According to the first defendant, he was conducting R.C.P.No.15/80, even prior to the death of their mother, and thereafter also. According to the first respondent, he spent a total sum of Rs.83,300/= and 3/10 share of that amount

will come to Rs.25,000/=. Though the first defendant did not produce any receipt or vouchers to establish that he had actually spent an amount of Rs.83,300/=, the court below accepted the same.

3. The only question arising for consideration in this appeal is whether the plaintiff who is bona fide purchaser for value is liable to pay 3/10 share of that amount. Admittedly, the plaintiff is not a legal representative of deceased Ammajan. He is a total stranger. He purchased the property from defendants 5 and 6, after paying the entire value of the property. The first defendant conducted the case not on behalf of the appellant, but on behalf of the other members of the family. Hence, defendants 2 to 6 alone can be made liable for that amount. The court below went wrong in making the appellant liable for the amount. That part of the decree by which the appellant is made liable for Rs.25,000/= is to be set aside.

In the result, the appeal is allowed in part. The decree passed by the court below, by which an amount of Rs.25,000/= with 6% interest interest per annum from the date of written statement till realisation, and also the charge created on the share allotted to the appellant-plaintiff is hereby set aside. It is made clear that neither the

appellant nor the property allotted to him are not responsible for that amount. However, I make it clear that the first defendant-first respondent, can realise the amount from other co-owners and from their assets.

**K.PADMANABHAN NAIR,**
**JUDGE**

nj.

**K.PADMANABHAN NAIR, J.**

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A.S.No.386 of 1998

**J U D G M E N T**

Dated: 17th July, 2007.

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